

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF WEST VIRGINIA
MARTINSBURG

FILED

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U.S. DISTRICT COURT
MARTINSBURG, WV 25

**JOHN UNGER, II,
JOHN OVERINGTON,
ELIZABETH BLAKE,
GREGORY CORLISS,
JERRY M. MAYS,
KENNETH MAYS,
BILL MOORE,
SHIRLEY MOORE,
CLARENCE PENNINGTON,
WILLIAM C. RITCHIE; and,
PHILLIP SPRIGGS,**

Plaintiffs,

v.

CIVIL ACTION NO: *3:01-cv-00075*

**JOSEPH MANCHIN, in his official capacity as
West Virginia Secretary of State;**

**EARL RAY TOMBLIN, in his official capacity as
President of the West Virginia Senate; and,**

**ROBERT S. KISS, in his official capacity as
Speaker of the West Virginia House of Delegates.**

Defendants.

INTRODUCTION

Plaintiffs are Democratic, Republican and Independent registered voters from the Fifteenth and Sixteenth State Senatorial Districts, as those Districts are apportioned and described in House Bill 551, which was passed by both house of the Legislature and signed into law on October 4, 2001. Plaintiffs are aggrieved by that part of the reapportionment relating to the state Senate. The 2001 Senate Redistricting Scheme ("the scheme") is a violation of Plaintiffs' Equal Protection rights. The Plaintiffs respectfully request that this Court convene a three judge panel, declare the scheme unconstitutional,

enjoin the defendants from conducting elections pursuant to the scheme, and grant them such other and further relief as may be proper.

Parties

1. Plaintiff John Unger, II, is a resident of Berkeley County, West Virginia, a registered Democrat, and a West Virginia State Senator.
2. Plaintiff John Overington is a resident of Berkeley County, West Virginia, a registered Republican and a member of the West Virginia House of Delegates.
3. Plaintiff Elizabeth Blake is a resident of Jefferson County, West Virginia, and a registered Democrat.
4. Plaintiff Gregory Corliss is a resident of Jefferson County, West Virginia, and a registered Republican.
5. Plaintiff Jerry M. Mays is a resident of Berkeley County, West Virginia, and a registered Republican.
6. Plaintiff Kenneth Mays is resident of Berkeley County, West Virginia, and a registered Republican.
7. Plaintiff Bill Moore is a resident of Berkeley County, West Virginia, and a registered Democrat.
8. Plaintiff Shirley Moore is a resident of Berkeley County, West Virginia, and a registered Democrat.
9. Plaintiff Clarence Pennington is a resident of Berkeley County, West Virginia, and a registered Democrat.
10. Plaintiff William C. Ritchie is a resident of Berkeley County, West Virginia, and a registered Independent.
11. Plaintiff Phillip Spriggs is a resident of Morgan County, West Virginia and a registered Independent.
12. Defendant Joseph Manchin is a resident of West Virginia and the duly elected Secretary of State, a constitutional officer.
13. As Secretary of State, Mr. Manchin is the chief elections officer of the state, charged with overseeing elections in the state, including those for State

Senate. Mr. Manchin is also charged with the duty of certifying election results in West Virginia.

14. Defendant Earl Ray Tomblin is President of the West Virginia Senate.

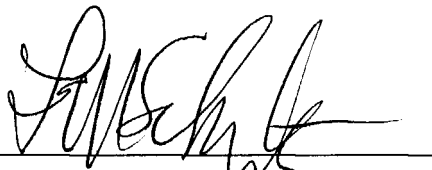
15. Defendant Robert S. Kiss is Speaker of the West Virginia House of Delegates.

Jurisdiction

1. This Court has original jurisdiction to hear this case pursuant to 28 U.S.C. §1343 (a)(3) and (4). On September 19, 2001, both houses of the West Virginia Legislature passed H.B. 551 (attached as Exhibit 1), a bill to apportion the West Virginia Legislature to account for the 2001 U.S. Census. On October 4, 2001, Governor Robert Wise signed the bill and it became effective from that date. The portion related to the West Virginia senate became West Virginia Code §1-2-1, as amended.
2. The Senate apportionment scheme (“the scheme”) is a violation of one man, one vote principles and the Equal Protection Clause of the Fourteenth Amendment, and represents a personal deprivation to each of the Plaintiffs, who are registered voters in the affected senate districts.
3. The scheme was drawn as it was in order to protect incumbent Senators.
4. The least populous senate districts are District 8 and District 17, which encompass Kanawha County and overlap one another.
5. The population of Districts 8 and 17 combined totals 200,073. Thus, each district is comprised of a population of 100,036.5 persons.
6. The ideal population of a West Virginia Senate District is 106,374 persons. This ideal is calculated by dividing the total population of West Virginia (1,808,344) by the number of Senate Districts (17).
7. District 8 and District 17 each have 6,337.5 fewer persons than the ideal, a deviation of -5.96%.
8. Under the 2001 scheme at issue here, Senate District 4 has the largest population (111,652). It exceeds the ideal population by 5,278, a deviation of 4.96%.

9. To calculate the maximum deviation under the 2001 scheme, the absolute deviation of the smallest Senate District (5.96) is added to the absolute deviation of the largest Senate District (4.96). This sum is 10.92%.
10. Under the 2001 scheme, the *average* Senate District deviates from the ideal population by 3.92%.
11. The population of District 16 is 111,455. It exceeds the ideal population by 5,081.
12. If District 16, encompassing part of Berkeley and all of Jefferson Counties had had the largest population, the absolute deviation would be 4.78%. When added to the absolute deviation of District 8, the sum would be a maximum deviation of 10.74%.
13. The population of District 15, encompassing all of Hampshire, Hardy, Morgan, Pendleton, Pocahontas and Randolph Counties, and parts of Berkeley, Grant and Upshur Counties, is 111,344 persons, or 4,970 more than the ideal population.
14. District 15's deviation is 4.67%. If totaled with the deviations in District 8 or District 17, it would produce a maximum deviation of 10.63%.
15. Any of *six* different Senate Districts – the Third, Fourth, Eleventh, Fourteenth, Fifteenth or Sixteenth – can be used to find a maximum deviation greater than 10% -- and 668,046 West Virginians live in the six Districts.
16. Thus, nearly 37% of West Virginians live in Senate Districts which are overpopulated in excess of the 10% guidelines set forth in the case law.
17. The overpopulation of the six Senate Districts dilutes the voting strength of every voter in each of the six Districts, including your Plaintiffs.
18. The dilution of your Plaintiffs' vote is an impermissible impairment of their fundamental right to vote and their fundamental right to run for public office in violation of the Equal Protection Clause.
19. The actions of the West Virginia Legislature were taken under color of state law and are a personal deprivation of Plaintiffs' fundamental constitutional rights, including but not limited to the right to vote, and thus actionable under 42 U.S.C. §1983.

20. Any future actions by Defendant Manchin to conduct elections or certify election results under the unconstitutional apportionment scheme at issue here will disenfranchise your plaintiffs. Such future action would be done under color of state law and would constitute a personal deprivation of Plaintiffs' right to vote, and would thus be actionable under 42 U.S.C. §1983.
21. The maximum deviation of over 10% in six separate Senate Districts is not justified by reference to any consistently applied legislative policy.
22. WHEREFORE, your Plaintiffs request relief as follows:
 1. That, pursuant to 28 U.S.C. 2284, this Honorable Court appoint a three judge panel to hear and decide this matter;
 2. That this Court find and declare the state senate reapportionment scheme, West Virginia Code, §1-2-1, unconstitutional in that it unpermissibly and unjustifiably restricts and dilutes Plaintiffs' voting rights;
 3. That this Court enjoin the Defendants from conducting any elections under the apportionment scheme as enacted; and,
 4. That this Court award such other and further relief as may be proper.



Lawrence M. Schultz
D. Michael Burke
Burke, Schultz & Harman
P.O. Box 1938
Martinsburg, WV 25402
(304) 263-0900
WVSB# 4293
Counsel for Plaintiffs

PLAINTIFFS
By Counsel

David Hammer
Hammer, Ferretti & Schiavoni
408 W. King Street
Martinsburg, WV 25401
(304) 264-8505
WVSB# 5047
Co-Counsel for Plaintiffs